IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.596 of 2007
RAUSHAN CHOUDHARY & ANR
Versus
STATE OF BIHAR & ANR
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3 10.09.2008. Heard learned counsel for the parties.

In the instant writ petition, petitioners pray for quashing order dated 16.5.2007, and order for release of rice and wheat seized from their godowns by Bochahan Police vide Bochahan PS case no. 46 of 2007.

It is alleged against the petitioners, that the grains meant for distribution amongst poor people had been seized from petitioners and kept in hand stitched bags, containing FCI marks and had been stolen from the FCI godowns.

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Learned counsel for the petitioners relying on order of this Court, passed in CWJC No. 7386 of 2005 on 29.6.2005, submitted that in terms of the notification of the State Govt. dated 11.10.2002, food grains have been taken out of the purview of the Bihar Trade Articles (Licenses Unification) Order, 1984 and Bihar Essential Articles (Display of Price and Stocks, Order, 1977 and with effect from that date neither any prosecution can be launched or any seizure or confiscation under section 7 of the E.C. Act can be made, against any individual in regard to trade in food grains.

Learned State counsel submits that the food grains seized from petitioner's godown are stolen grains of Govt./FCI godown meant for distribution to poor people. He submits that section 7 of the E.C. Act would be applicable in the light of Clause (6) of the

P.D.S.(Control) Order, 2001.

It is true that wheat, rice etc have been taken out of the purview of the Unification Order, 1984 by virtue of govt. notification issued in the years 2002 by notification of the State government dated 11.10.2002 following the notification no. GSR-104(E) dated 15.2.2002 of the Central Government. By virtue of the aforesaid notification wheat, rice and other grains apart from edible oil etc have been deregulated from the E.C.Act, 1955. In this view of the matter, a dealer can trade in aforesaid items without having any license for the same either under the earlier notification order mentioned above or even under the PDS Control Order, 2001. The effect would be that there would be no limit on storage of such items nor there will be required to maintain any stock registered in respect of the same. Nevertheless if the prosecution by material can establish that food grains seized are stolen grains from Govt/FCI godown meant for distribution to poor families under various scheme of the Govt. the offending person is liable to be prosecuted under section 7 of the E.C.Act. In case, the prosecution is not able to establish that the materials are stolen materials of the Govt. for distribution to poor people or under the Govt. scheme the prosecution cannot be sustained in the eye of law.

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In view of the aforesaid discussions, I am not inclined to quash the prosecution pending investigation in the matter and I dispose of the case with liberty to the petitioner to file appropriate application if he is aggrieved by the filing of Final form.

The aforesaid provision of law entitles a person to deal in food grains without obtaining license but it does not provide immunity to a person or dealer from prosecution if there are witnesses of the fact that the food grains in questions have been stolen from Govt./FCI godown kept under Public Distribution System for distribution in B.P.L. people. In such case, a dealer would not be a dealer under the PDS and would be liable under section 7 of the EC Act. It is also a case that food grains had been kept in bags containing FCI marks. In this respect, it goes without saying that merely this would not be sufficient to base prosecution unless and until it is established that they have been stolen from the FCI godown.

This Court having heard the rival contention finds that the allegation that food grains were stolen from the Govt. godown would only be decided during investigation, as such, at the threshold, it is premature to quash order dated 16.5.2007, passed in Case No. 8/Adhi/2007-08 without awaiting for submission of final form.

The writ petition is dismissed with liberty to the petitioners to file appropriate application, if they are otherwise aggrieved by the filing of the charge sheet.

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Shashi. **(S.P.Singh,J).**